

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

**FRATERNAL ORDER OF POLICE,
LODGE #5**

AWARD

Case No. 14 390 01753 11 (Miles)

-- and --

CITY OF PHILADELPHIA

ARBITRATOR: James M. Darby, Esq.

APPEARANCES: For the FOP:
Mark L. Gelman, Esq.
Jennings Sigmond, P.C.

For the City:
Diane A. Loebell, Esq.
Senior Attorney

This case arises out of the City of Philadelphia's ("the City") termination of Police Officer Jamie Miles ("the Grievant") for conduct unbecoming an officer and neglect of duty. The Fraternal Order of Police, Lodge #5, filed a grievance alleging that there is no just cause for the Grievant's termination.

By letter dated December 5, 2011, from the American Arbitration Association ("AAA"), the undersigned was notified of his selection as Arbitrator of this dispute. A hearing was held on December 21, 2012, at the AAA offices in Philadelphia, Pennsylvania, where the parties were afforded a full opportunity to present testimony,

exhibits and arguments in support of their positions. The parties submitted post-hearing briefs that were received by the undersigned on or about March 26, 2013, at which time the record was closed. After fully considering all of the evidence and arguments presented, the matter is now ready for final disposition.

QUESTION TO BE RESOLVED

At the commencement of the hearing, the parties stipulated to the following issue to be resolved by the Arbitrator:

Did the City have just cause to dismiss the Grievant, Police Officer Jamie Miles? If not, what shall the remedy be?

REMEDY REQUESTED

The Union requests that the grievance be sustained, that the Grievant be reinstated and made whole, and that the “Arbitrator retain jurisdiction for a brief period of time for purposes of clarification of his award” (Union Brief p. 12).

BACKGROUND

The following material facts are undisputed. The Grievant was hired by the City Police Department (“the Department”) as a police officer in 2003. In March 2008, she was invited to join the Community Relations Unit (“CRU”) after its Commanding Officer, Capt. Dennis Gallagher, recommended her for the unit. CRU staff performs a number of community-based functions, including educating school students about the dangers of drugs and gangs. In this regard, the Grievant was assigned to instruct 4th and

5th grade students participating in the D.A.R.E. (Drug Abuse Resistance Education) and the G.R.E.A.T. (Gang Resistance Education and Training) programs. These programs are funded with federal grant monies.

As part of these assignments, the Grievant was required to go to a different school each day for four days each week, with the fifth day spent at the CRU Office performing administrative work. She reported to her supervisor, Sgt. S [REDACTED] N [REDACTED], that she was presenting the G.R.E.A.T. program at Meredith Elementary School ("Meredith") on six successive Fridays between May 7, 2010 and June 11, 2010. As of June 1, 2010, the Grievant had failed to furnish N [REDACTED] with all of her required paperwork, which includes the names of the students instructed and their teachers' names. On that date he directed the Grievant to submit the necessary paperwork.

On June 4, 2010, the Grievant faxed N [REDACTED] additional paperwork. N [REDACTED] determined that the information she submitted were actually documents the Grievant previously submitted that were altered. He visited Meredith on June 7 and 11, 2010, and learned that the Grievant had never visited the school at any time to present the G.R.E.A.T. program to students. The matter was referred to the Internal Affairs Division (IAD), as well as to the District Attorney's (DA's) Office.

On April 7, 2011, after receiving a statement of declination from the DA's Office, IAD Investigator Sgt. James Schrack interviewed the Grievant. The Grievant admitted that she never instructed any students at Meredith, and that she submitted false paperwork claiming that she did. She explained that she fell behind in her school presentations at Benjamin Franklin and Feltonville Schools and that she was at those

schools on the Fridays in question “making up a previous assignment” (City Ex. 16, p. 5). The Grievant also told Schrack that she was “under a lot of pressure” due to an EEO complaint she filed in 2008 against one of her superiors (*Id.*).

Schrack spoke with the principals at Benjamin Franklin and Feltonville, both of whom recalled seeing the Grievant at their schools at some point. The only relevant records available were sign-in sheets at Benjamin Franklin for May 21 and 28, which did not contain the Grievant’s name.

The Department Disciplinary Code (“the Code”) cites “Honor, Service and Integrity” as the “core values” of the Department. Conduct Unbecoming, Section 1-§010-10 prohibits “making a false entry in any Departmental record or report.” The penalty for a first offense is “5 days to Dismissal.” Conduct Unbecoming, Section 1-§021-10 prohibits “any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.” The penalty for a first offense is “30 days or Dismissal.” Neglect of Duty, Section 5-§010-10 prohibits “absence without leave for a minimum of one working day, but less than five consecutive working days.” The penalty for a first offense is “2 to 10 days.” (Joint Ex. 3.)

On June 22, 2011, the Department charged the Grievant with violating the aforementioned Code provisions. Pursuant to a Police Board of Inquiry (“PBI”) hearing on October 3, 2011, the Grievant was found guilty with a recommendation for dismissal, or a “transfer, if not dismissed.” On October 31, 2011, the Grievant was served with a “Notice of Intention to Dismiss” by Police Commissioner Ramsey. (Joint Ex. 2.)

At the arbitration hearing, Commissioner Ramsey explained his justifications for dismissing the Grievant. He cited to the students' loss of instruction regarding the dangers of drug use and gang-resistance, for which the Department received federal dollars to complete. The Commissioner also emphasized that the Grievant's actions were intentional, not an accident or mistake, and that she fell short of meeting the core values of honor, service and integrity. He testified that the fact she admitted to her mistake after being caught, and had no prior discipline, did not excuse her misconduct nor change his recommendation for dismissal.

The Grievant testified that as a CRU officer, she was generally in four schools simultaneously throughout the work week. She also had to deal with snow days, court time, class trips, etc., which caused her to fall behind in her instruction responsibilities at her schools. The Grievant averred that she went to Meredith two or three times in April 2010 to try to meet with the principal, but was unsuccessful. She stated that she did not explain her problem to N [REDACTED], because she had gone to him in the past with issues and he was not helpful. One of those issues pertained to a 2008 EEO complaint she filed against a Department official for sexual harassment. According to the Grievant, N [REDACTED] told her she was "overreacting" and told her not to "ruffle feathers."¹ She stated that the EEOC ultimately made a probable cause finding.

The Grievant testified further that she did not believe she was stealing time because she was reporting to other schools on the Fridays in question. On cross-examination, the Grievant stated that she did not inform N [REDACTED] of this fact. She also

¹ Unfortunately, Sgt. Naughton passed away prior to the instant hearing.

testified that she was not required to sign in at either Benjamin Franklin or Feltonville schools when she appeared for her D.A.R.E. or G.R.E.A.T. instruction, and she did not speak to the principals at these schools.

The Union presented a large number of documents involving other police officers charged with, among other things, “stealing time.” The bulk of the incidents involved vice officers who left their tours of duty early, yet were paid for working their full shifts. The officers received reprimands and were required to provide restitution to the City for the time that was “stolen.” One of the officers’ supervisors was suspended for thirty days and transferred, while another supervisor was reprimanded. In another incident, a corporal was suspended for 22 days for falsifying 37 hours of time and 27 days of meal allowances. In several other incidents of misconduct, the Union insists that no discipline was meted out.

DISCUSSION

The City maintains that the Grievant’s termination must be upheld. It points to her creating false documents, lying about her whereabouts, and waiting until April 2011 to admit to her wrongdoing (after she was caught). The City also insists that the Grievant never registered any concerns or complaints with her superiors about her inability to perform her tasks. The PBI and the Commissioner carefully considered all of the facts and circumstances involved, concluded that the Grievant neglected her duties and engaged in conduct unbecoming, and recommended termination. She failed to

meet the Department's core values of "honor, service and integrity." The City urges that the PBI's and the Commissioner's determinations not be second-guessed or set aside.

Additionally, the City takes issue with the Union's evidence of disparate treatment, which it claims involve different circumstances than the instant case. Specifically, several of the cited instances did not involve stealing time, and in two cases the documents fail to show what, if any, discipline was imposed. The City also notes that the other incidents do not involve depriving students of D.A.R.E./G.R.E.A.T. instruction and/or failing to properly utilize federal monies.

The Union argues that the City failed to impose discipline on the Grievant in a "fair, equitable and non-disparate manner." It cites to at least 21 instances where officers of varying ranks who engaged in comparable alleged misconduct (falsifying records for pecuniary gain) were not terminated, but rather, were not disciplined or were merely reprimanded and asked to pay restitution. Only one officer received as much as a thirty-day suspension.

According to the Union, the Grievant failed to report to her assignment on merely six occasions. She did not receive any financial benefit inasmuch as she reported to either Benjamin Franklin or Feltonville on those six days. The Grievant admitted to her lapse in judgment, attributing it in part to her "prior mistreatment" in the CRU. Under these circumstances, the Union insists the Grievant's treatment was "staggeringly dissimilar" to the "slap on the wrist" handling of other officers under similar circumstances. Thus it maintains the City lacks just cause to terminate her.

It is undisputed that the Grievant engaged in conduct unbecoming and neglect of duty as charged by the City. She admits to falsely reporting to N█████ that she visited Meredith on six occasions to perform G.R.E.A.T. instruction, when she was not actually there. When questioned about it, she doctored previous reports she had submitted to make it look as though she had instructed at Meredith. A simple comparison of the falsified forms with prior records (as well as a discussion with the principal at Meredith), disclosed the Grievant's intentional dishonesty.

The Arbitrator agrees with the Commissioner that the Grievant's actions constitute serious misconduct. The ability of the City to maintain an effective law enforcement program is fully dependent upon its officers to follow orders, tell the truth and serve as role models for the citizenry at large. The Grievant utterly failed in this regard when she deliberately falsified Department records and lied about her whereabouts on Fridays between May 7 and June 11, 2010.

The more difficult issue is whether the penalty of termination is appropriate. As the Union notes, the Grievant has not previously been disciplined, and was disinclined to seek help from her superiors due to her prior EEOC filing. These factors weigh in the Grievant's favor when considering an appropriate penalty. However, I cannot accept as a given that the Grievant received no financial gain from her misconduct. The only evidence that she was at Benjamin Franklin and/or Feltonville, on the days she reported she was at Meredith, is the Grievant's own testimony – testimony that is clearly self-serving and questionable given that this entire dispute stems from her inability to tell the truth.

Nonetheless, the undersigned cannot ignore the Union's evidence of disparate treatment. While the City attempts to argue that depriving students of instruction regarding the dangers of drug use and gangs makes the instant case more compelling than those cited by the Union, citizens could reasonably argue that multiple vice officers leaving their shifts early on a regular basis potentially has a far more serious impact. However, it is unnecessary to resolve this question or to analyze the Union's evidence any further, since the fact remains that there is no evidence in this case that the City has ever terminated a police officer for "stealing time" or falsifying records.

Accordingly, the undersigned concludes that the City did not have just cause to terminate the Grievant. After considering the totality of the circumstances of this case, balancing the seriousness of the misconduct and the extenuating circumstances that exist, I conclude that the Grievant shall be reinstated with her time off treated as a suspension without pay. The parties shall confer over whether returning the Grievant to the CRU, under all of the circumstances, is appropriate or whether it would be better to place her back in a patrol officer position. In any case, the Grievant's reinstatement is conditioned upon her satisfying all of the applicable certifications and requirements of her position.

Consistent with the foregoing discussion and findings, the Arbitrator renders the following

AWARD

The grievance is sustained in part and denied in part.

The City did not have just cause to terminate the Grievant, Police Officer Jamie Miles. As a remedy, the Grievant shall be reinstated to service with her time off treated as a disciplinary suspension without pay.

The parties shall confer over whether returning the Grievant to the CRU is appropriate or whether it would be in the best interest of all concerned to return her to a patrol officer position. In any case, the Grievant's reinstatement is conditioned upon her satisfying all of the applicable certifications and requirements of her position.

The undersigned will retain jurisdiction for the purpose of resolving any disputes over the implementation of this Award.

A handwritten signature in black ink, appearing to read "James M. Darby".

JAMES M. DARBY
Arbitrator
Lancaster, Pennsylvania
May 8, 2013